

BYLAWS
APPALACHIAN STATE UNIVERSITY FOUNDATION, INC.

Article I
CORPORATE NAME, LOCATION, PURPOSES AND LIMITATIONS

Section 1. Name and Principal Office. The name of the corporation is Appalachian State University Foundation, Inc. (hereinafter referred to as “the corporation” or “the Foundation”). The street address of the principal office of the corporation is 553 Blowing Rock Road, Boone, North Carolina 28607 (Watauga County) and the mailing address is ASU Box 32064, Boone, NC 28608.

Section 2. Purposes. The corporation is organized and shall be operated exclusively for the charitable, educational and scientific purposes that support and benefit Appalachian State University (the “University”). The purposes of the corporation include, but are not limited to, the following:

- A. To aid, strengthen and further in every proper and useful way the educational purposes, work and services of Appalachian State University, and to develop and utilize the ties of interest, sympathy and affection existing between the University and its alumni and friends throughout the world;
- B. To acquire (by gift, devise, or otherwise), own, develop, lease, manage, operate and sell, and otherwise to exercise any and all rights of ownership with respect to, monies and property for the benefit of the University (or any of the University’s affiliated organizations), and to conduct such activities directly or indirectly through subsidiaries; and
- C. To do any and all other acts and things that are consistent with the purposes stated above and that may be deemed desirable or expedient for the benefit of the University, its programs and its faculty, staff and students.

Section 3. Activities Not Permitted.

- A. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its Directors, officers or any “private shareholder or individual” within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any future United States Internal Revenue law); provided, however, that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered (except as otherwise provided in Article VIII of the Restated Articles of Incorporation on in these Bylaws) and to make payments and distributions in furtherance of the purposes set forth in Article VI of the Restated Articles of Incorporation.
- B. No substantial part of the activities of the corporation shall be carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene (including the publishing or distribution of statements) in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of the Restated Articles of Incorporation or these Bylaws, the corporation shall not carry on any activities not permitted to be carried on by a:
 - 1. corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any future United States Internal Revenue law); or

2. corporation, contributions to which are deductible under Sections 170(c)(2) and 2055 of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any future United States Internal Revenue law); or
3. charitable or religious corporation created under the North Carolina Nonprofit Corporation Act.

Section 4. Fiscal Year. The Foundation's fiscal year is July 1 – June 30, inclusive, unless otherwise defined by the Board of Directors.

Section 5. Existence; Disposition of Assets on Dissolution. As provided in Section 4.01 of the Restated Articles of Incorporation, the period of existence of the corporation is perpetual. Dissolution or other termination of the corporation must be approved by the Board of Trustees of the University. In the event of the dissolution or other termination of the corporation, any net assets remaining shall be transferred to the University, or to one or more other organizations that are exempt organizations described in Sections 501(c)(3), 170(c)(2) and 2055 of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any future United States Internal Revenue Law) for the benefit of the University, or to federal, state or local government exclusively for public purposes.

Article II

BOARD OF DIRECTORS

Section 1. General Power. The affairs and business of the Foundation shall be managed by the Board of Directors ("Board") as provided in the Restated Articles of Incorporation and/or the North Carolina Nonprofit Corporation Act.

Section 2. Classes of Directors. The Board shall have two classes of directors (individually, "Director,"; collectively, the "Directors"):

- A. Ex Officio, Voting Directors. The Chancellor, the Vice Chancellor for Business Affairs, the Vice Chancellor for University Advancement (who shall also serve as President of the Foundation), the chair of the Board of Trustees of the University, and three (3) additional Trustees who are appointed by the Board of Trustees. Ex Officio, Voting Directors shall serve so long as they hold University positions by virtue of which they serve as Directors.
- B. Public Directors. The Board is comprised of no more than thirteen (13) Public Directors.

Section 3. Appointment of Public Directors. In order to provide continuity in the Board, Public Directors shall be appointed to staggered three-year terms such that each year approximately one-third (1/3) of the Public Directors shall be appointed. Public Directors may be appointed to serve more than one (1) term, but a maximum two (2) terms, consecutively, and thereafter may be re-appointed after the passage of a minimum of one (1) year since the expiration of the Director's prior term. Directors whose terms have not expired shall vote on: (i) nominees for new Public Directors to succeed those whose terms have expired; and (ii) nominees to fill Board vacancies caused by death, resignation, termination of appointment, or other cause. All nominees will be submitted to the University Board of Trustees for appointment to the Foundation Board. Public Directors shall be voting members beginning at the meeting following appointment by the Board of Trustees. Any Public Director appointed to the Foundation Board to fill a vacancy shall serve for the period of time remaining in the unexpired term. Appointment for a partial term to fill a vacancy shall not count toward the two consecutive term limitation.

Section 4. Regular Meetings. There shall be up to four regular quarterly meetings of the Board each year. The annual meeting shall be one of the regular meetings and shall be held on such date as the Board may

determine. The other regular meetings shall be held prior to the annual meeting, on dates as the Board may determine.

Section 5. Place of Meeting. The Board may designate the time and place for the regular meetings or for any special meeting. If no designation is made or if a special meeting is otherwise called, the place of the meeting shall be at the University.

Section 6. Notice of Regular Meetings. Written notice stating the place, day and hour of any meeting of the Board shall be delivered either personally, electronically or by mail to each Director at least twenty days before the date of such meeting, by or at the direction of the Chair of the Board, or the Secretary, or other officers or Directors calling the meeting. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at the Director's address as it appears on the records of the Foundation, with postage thereon prepaid.

Section 7. Special Meetings. Special meetings of the Board may be called by or at the request of the Chair of the Board or by a majority of the Directors. Special meetings of a committee may be called by or at the request of the committee chair or by a majority of the committee members. The person or persons authorized to call special meetings of the Board or a committee may designate the place for holding any special meetings. The purpose(s) for which the meeting is being called shall be stated in the notice.

Section 8. Notice of Special Meetings. Whenever feasible, at least five (5) days' written notice of any special meeting of the Board or a committee shall be delivered personally, or via first-class mail, email, facsimile or telephone to each Director at the address or appropriate telephone number as shown by the records of the Foundation. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at the Director's address as it appears on the records of the Foundation, with postage thereon prepaid. Any Director may waive notice of any meeting at any time. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. Quorum. A majority of the Directors entitled to vote, present in person or represented by proxy, shall constitute a quorum at any regular meeting or special meeting of the Board, and at any committee or subcommittee meeting. If a quorum is not present at any meeting of the Board or a committee, a majority of the Directors present and represented by proxy may adjourn the meeting without further notice.

Section 10. Means of Voting. Voting on action items may be executed in person, telephonically, by proxy or by electronic transmission (including, but not limited to, email, facsimile or PDF file attached to email).

Section 11. Proxies. At any meeting, a Director entitled to vote may vote by proxy executed in writing by the Director or by the Director's duly authorized attorney-in-fact. A proxy may only designate a voting officer or Director to act and vote in the member's stead. A proxy will also be valid if in the form of an electronic record that bears the member's electronic signature and may be directly reproduced in paper form. No proxy may be valid after five months from the date of its execution. All proxy forms shall be delivered to the Secretary or Assistant Secretary of the Board of Directors.

Section 12. Absences. Absences may be considered when Public Directors are reconsidered for additional terms.

Section 13. Compensation. Directors and officers shall receive no salary or other compensation for their services.

Section 14. Director's Conflict of Interest.

- A. University employees may not serve as Public Directors. University employees are defined as all faculty and staff who are employed by Appalachian State University and who receive both financial compensation and employment benefits (such as medical insurance and/or retirement via the Optional Retirement Program or the Teachers' and State Employees' Retirement System) as a result of their employment.
- B. The immediate family members (spouses, children, siblings and parents) of any University leaders may not serve as Public Directors. University leaders are defined as the Chancellor, the Chancellor's direct reports, and those who report directly to them.
- C. Any Director who has a direct or indirect financial interest in any business entity or person that has entered or wishes to enter into a contract or other transaction or relationship recognized by law with the Foundation must disclose such interest to the Board. Such Director shall not participate in discussions regarding the subject matter disclosed and shall not vote on any action relating to said subject matter.
- D. All Directors shall sign a Conflict of Interest Statement, which will be filed in the Foundation Office annually.

Article III
OFFICERS

Section 1. Officers. The officers of the Foundation shall be a Chair, Vice Chair, President, Secretary, Treasurer, and such other officers as the Board may deem appropriate. The office of President shall be held Ex Officio by the Vice Chancellor for University Advancement.

Section 2. Election and Term of Office. The Chair, the Vice Chair and the Secretary of the Board shall be nominated by the Governance, Audit & Risk Committee from among the Directors and elected by the Directors of the Foundation. The Chair, Vice Chair and Secretary shall be elected by the Board at the annual meeting for a term of one (1) year with the option of running for an additional consecutive year. Each officer shall hold office until the successor shall have been duly elected and shall have qualified. No person, except the Treasurer, shall serve more than two consecutive years in the same office; however, any person may be reelected after vacating an office for one (1) term. The Board may elect persons to fill vacancies in any of the offices by death, resignation, removal, disqualification, or otherwise for the unexpired portion of the term.

Section 3. Chair of the Board. The Chair of the Board shall preside at all meetings of the Board. The Chair of the Board may sign with the Secretary, or any other officer of the Foundation authorized by the Board, any deed, mortgage, bond, contract, or other instrument which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent. The Chair of the Board shall perform all duties incident to the office of Chair of the Board and such other duties as may be prescribed by the Board. The Chair of the Board shall, to the extent practicable, attend all meetings of the Finance & Investments Advisory Committee.

Section 4. Vice Chair of the Board. In the absence of the Chair of the Board or in the event of the Chair of the Board's inability or refusal to act, the Vice Chair of the Board shall perform the duties of the Chair of the Board, and, when so acting, shall have all the powers of and be subject to all restrictions upon the

Chair of the Board. The Vice Chair of the Board shall perform such other duties as may be assigned by the Chair of the Board or by the Board.

Section 5. Secretary. The Secretary shall see that all the minutes of the meetings of the Board are kept in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; receive and record all proxy designations in accordance with the provisions of these Bylaws or as required by law; tabulate and report all votes cast by Directors; supervise the safekeeping and preservation of the corporate records and the seal of the Foundation; see that the seal of the Foundation is affixed to documents, the execution of which on behalf of the Foundation under its seal is duly authorized in accordance with the provisions of these Bylaws; and keep a register of the post office address of each Director which shall be furnished to the Secretary by each Director. Assistant Secretaries may be appointed as needed by the Board to assist in fulfilling the duties of the Secretary as stated above.

Section 6. Treasurer. The chair of the Finance & Investments Advisory Committee shall serve as Treasurer and shall serve in an advisory capacity to the President, the Assistant Vice Chancellor for Foundation Finance, and the Board with regard to finance matters.

Article IV **OFFICE OF THE PRESIDENT**

Section 1. Office. The President shall serve as the Chief Operating Officer of the Foundation. The Board may designate a vice president who has authority to act for the President in the President's absence. The vice president shall perform such duties as are expressly delegated by the President or the Board.

Section 2. Responsibilities. Under policies established by the Board and/or the Board of Governors of the University of North Carolina, and subject to approval of the Chancellor, the President shall supervise and have charge of all activities and operations relating to the general management of the corporation. The President shall see that all activities are properly organized, directed and accounted for, and shall make such reports to the Board and committees as are requested and are necessary to keep them fully informed with regard to any phase of administration of the corporation, and shall act as a liaison to the Chancellor. Without limiting the generality of the foregoing, the President shall be responsible for:

- A. All day-to-day operations;
- B. The hiring and supervising of any approved University staff (who shall report directly to the President and not to the Board);
- C. All program development;
- D. Financial transactions; and
- E. The execution of documents, contracts, and other instruments on behalf of the corporation, as authorized by the Board.

The President shall have charge of all financial records and oversee the financial operation of the corporation, monitor the independent audit and perform such other duties as are incident to such office and as may be assigned by the Board.

Article V

COMMITTEES

Section 1. General. The Foundation shall have standing committees and such special committees as the Board deems necessary or desirable. The Chair of the Board shall appoint members of each committee and designate a chair from the Directors appointed to the committee. Terms for the committee members shall be one (1) year. Committee members may be re-appointed for additional one-year terms. No committee shall have any authority as to the following matters:

- A. Approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the corporation's assets;
- B. Elect, appoint, or remove Directors; or
- C. Adopt, amend, or repeal the Articles of Incorporation or Bylaws.

Section 2. Executive Committee. The Chair of the Board, Vice Chair of the Board, President, Secretary, Treasurer and an at-large Board member, who shall be appointed by the Chair of the Board, shall comprise the Executive Committee. The Executive Committee shall have and exercise the authority of the Board of Directors in the management of the business of the Foundation between the meetings of the Board of Directors; provided, however, that the Executive Committee shall have no power to (a) approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the corporation's assets; (b) elect, appoint, or remove Directors; or (c) adopt, amend, or repeal the Articles of Incorporation or Bylaws. The presence of all members of the Executive Committee at any regular or special meeting of the committee, either in person or represented by proxy, shall be required for the transaction of business.

Section 3. Standing Committees. Except as may otherwise be provided in these Bylaws, the membership of other standing committees shall consist of not less than three (3) Ex Officio Directors and not less than three (3) Public Directors. Standing committees shall be: the Finance & Investments Advisory Committee, the Governance, Audit & Risk Committee, the Property Management Committee, and such other standing committees as the Chair of the Board may determine necessary and proper for the administration of the Foundation's affairs. The Chair of the Board may appoint ad hoc committees as needed to assist in conducting the business of the Foundation. Any action of a committee shall be subject to the approval of the Board unless the Board has expressly delegated authority to the committee to take such action. The chair of a standing committee may appoint a subcommittee to carry out specific tasks for that committee. The President shall designate a staff member to assist each committee in carrying out its responsibilities.

Section 4. Finance & Investments Advisory Committee. Membership shall be no less than seven (7) Directors. The committee shall meet as required, but at least once per year, to review and recommend budgets. The committee shall submit a recommended annual budget to the Board for final approval. The committee shall monitor the Foundation's cash flow and spending rate formula for budgetary purposes. The committee shall evaluate the policies and performance of the investment managers employed by the Foundation and submit those findings to the Board for information or with recommendations for action. The committee shall also have authority to determine the allocation of investments in various asset classes. All such actions taken by the committee shall be reported to the Board and are subject to ratification by the Board. All actions taken by the committee shall be reported to the Board and are subject to approval or ratification by the Board. In addition, the committee shall assist and advise in such other matters as may be assigned to it by the Chair of the Board.

Section 5. Governance, Audit & Risk Committee. Membership shall be no less than seven (7) Directors. The President shall be an Ex Officio voting member of the Committee. The committee shall coordinate orientation and continuing development and education for Directors. The committee shall direct review of the Bylaws and Foundation policies, as well as coordinate ongoing assessment of the performance of the

Board. The committee is responsible for monitoring compliance with the Foundation's code of conduct, conflict of interest policy and other policies, and making such recommendations with respect to conduct of Directors as it deems appropriate. The committee shall approve in advance audit and non-audit accounting services and select separate CPA firms for each type of service (audit/non-audit). The CPA firm providing an audit for the Foundation may also provide tax return or report preparation services that are approved in advance by the Governance, Audit & Risk Committee. The committee will receive, examine and forward to the Board the annual audit report prepared by an independent CPA firm. The committee will review IRS forms to be submitted by the Foundation with the independent CPA firm preparing the forms. The committee will monitor the Foundation's compliance with policies, regulations and guidelines of the University of North Carolina that pertain to the relationship between the Foundation and Appalachian State University. In addition, the committee shall assist and advise in such other matters as may be assigned to it by the Chair of the Board.

Section 6. Property Management Committee. Membership shall be no less than seven (7) Directors. The committee shall establish policies relating to the acceptance of gifts of real property and make decisions relating to the acceptance, management and disposal of real property. The committee shall also establish policies relating to gifts of personal property (other than cash) and make decisions relating to the acceptance, management and disposal of personal property (other than cash), if it is known at the time the gift is offered to the Foundation that the gift will not be transferred after acceptance to the University. All such actions taken by the committee shall be reported to the Board and are subject to ratification by the Board. In addition, the committee shall assist and advise in such other matters as may be assigned to it by the Chair of the Board.

Article VI

SEAL

Section 1. Seal. The seal of the Foundation shall consist of a circle within which shall be inscribed the words, "Appalachian State University Foundation, Inc."

Article VII

EMERGENCY

Section 1. Emergency. In the event of any emergency stemming from an act of war, act of terror, civil disobedience, widespread pandemic, or similar disaster resulting in the declaration of a state of emergency (or similar declaration) by Federal, state or local officials that prevent the normal operation of the Board during the continuance of such emergency, the following Bylaw provisions shall automatically become effective and operative and shall remain in effect until it is practical for a normally constituted Board to resume its normal functions in support of the Foundation. An emergency exists for purposes of this Article if a quorum of the Foundation's Directors cannot readily be assembled because of some catastrophic event.

Section 2. Meetings During Emergency. Meetings of the Board during the occurrence of an emergency described above shall be called by the Chair, Vice Chair, President, Secretary, Treasurer, Chancellor, Vice Chancellor for Business Affairs, or chair of the Board of Trustees of the University. If, at any time, during a period of acute emergency, it shall become impractical or impossible to give notice of a meeting of the Board, in the manner prescribed by Article II of the Bylaws, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each Director of the time and place of the meeting. Meetings and votes may be held using any reasonable means available, such as telephone, electronic mail, video conference, web conference, etc.

Section 3. Quorum. Three (3) members of the Board of Directors shall constitute a quorum for an emergency meeting. A majority vote of the Board members present at a meeting at which a quorum is achieved shall constitute an action by the Board. Reasonable efforts will be made for an emergency meeting quorum to consist of at least one (1) Ex-Officio Voting Director and at least one (1) Public Director.

Section 4. Effect on Regular Bylaws. All provisions of the regular Bylaws consistent with the emergency Bylaws remain effective during the emergency. The emergency Bylaws are not effective after the emergency ends.

Section 5. Liability. Corporate action taken in good faith in accordance with the emergency Bylaws binds the corporation, and the fact that the action was taken pursuant to emergency Bylaws shall not be used to impose liability on a corporate Director, officer, employee, or agent.

Article VIII **AMENDMENTS TO BYLAWS**

Section 1. Bylaws Amendments. The Bylaws may be amended as follows:

- A. The text of the proposed amendment is presented in writing to the President.
- B. The President obtains a written legal opinion by counsel as to the effect, if any, of the proposed amendment on the exempt status of the Foundation within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law.
- C. The Secretary provides a copy of the proposed amendment to the Directors no less than ten (10) days prior to the scheduled meeting of the Board at which the amendment is to be considered.
- D. The Board determines its approval or disapproval of the proposed amendment(s). A majority vote of the Directors present at a meeting where there is a quorum is required for the approval of the amendment(s).
- E. Proposed amendments are submitted to the Board of Trustees of the University for final approval.

Amended August 27, 2010

Amended May 4, 2012

Amended April 26, 2013

Amended November 7, 2014

Amended February 3, 2017

Amended November 16, 2018

Amended March 26, 2020

Amended August 4, 2020 (*Approved by Board of Trustees on September 25, 2020*)

Amended July 6, 2021 (*Approved by Board of Trustees on September 24, 2021*)